

RESOLUTION NO. 2024-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS WAIVING CERTAIN CONTRACT DATES AND PROVISIONS PROVIDED IN THE FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NEW BRAUNFELS AND SOUTHSTAR AT MAYFAIR, LP FOR MAYFAIR DEVELOPMENT DATED MAY 6, 2024.

WHEREAS, by Consent Resolution entitled “Resolution of City of New Braunfels, Texas Consenting to the Creation of Comal County Water Improvement District No. 3, which is in the Extraterritorial Jurisdiction of the City,” the City consented to the creation of Comal County Water Improvement District No. 3 (the “Original District”);

WHEREAS, on February 9, 2022, the City and the District entered into the Development Agreement Between the City of New Braunfels and Southstar at Mayfair, LP (“Developer”) (the “Initial Agreement”), which was later amended and restated by the referenced agreement (the “Agreement”);

WHEREAS, capitalized terms not defined in this Resolution shall have the term ascribed to them in the Agreement;

WHEREAS, by its terms, the Agreement addresses emergency and other services in the Original District, or any districts resulting from an act of division of the Original District, to wit (collectively, the “Service Agreements”):

Fire and EMS Services. Fire and emergency medical services shall be provided through a written agreement by and between the District and Emergency Services District. This Agreement shall be in place in advance of the election of directors to the District.

Public Safety and Police Services. Public Safety and Police services shall be provided in the District. The City may in its sole and absolute discretion enter into a written agreement with the District to be the provider of Public Safety and Police Services. The District may alternatively enter into such a written agreement with Comal County. This agreement shall be in place in advance of the election of directors to the District.

Solid Waste Services. Solid Waste Collection Services shall be provided in the District. The City may in its sole and absolute discretion enter into a written agreement with the District to be the provider of Solid Waste Services. Upon the City’s approval, which shall not be unreasonably withheld, the District may alternatively enter into such a written agreement with a private provider of Solid Waste Services. This agreement shall be in place in advance of the election of directors in the District.

WHEREAS, on May 7, 2022, the District held a confirmation election and elected initial directors to the Board of Directors of the District (the “Initial Directors Election”);

WHEREAS, as of the Date of the Initial Directors Election, the above-referenced Service Agreements were not in place;

WHEREAS, the Agreement also provides for the division of the Original District, to wit:

Division of District. The plan for dividing the District into new Districts will be submitted in advance of the election of directors to the District. The District may, from time to time, without any further City consent, be divided into two or more Districts in accordance with the provisions of Section 8489.107 of the Creation Statute so long as (i) the division complies with applicable laws and each District created by a division of the original District encompasses a minimum of one hundred (100) acres; (ii) the division does not cause the area in a Final Plat (as defined in the Development Agreement) to be located within more than one District; and (iii) the District shall give the City no less than sixty (60) days advanced written notice of the intent to divide and create a new District with such notice including a metes and bounds description of the new District. Owner agrees that the City shall not be required to grant a certificate of occupancy for a structure located within a District unless the District encompassing such structure complies with the preceding limitations. In no event shall the division of the District and creation of one or more new Districts be construed to permit any land use inconsistent with the Master Framework Plan as amended from time to time. The creation of any new District not complying with the above limitations shall require the prior consent of the City (the “Division of District Provision”).

WHEREAS, at the time of the Initial Directors Election, the Original District did not have a plan for dividing the District, and accordingly, a plan for dividing the Original District was not submitted to the City prior to the Initial Directors Election;

WHEREAS, subsequent to the Initial Directors Election, on February 9, 2024, pursuant to Chapter 8489, Texas Special District Local Laws Code (the “Creation Statute”), the District adopted an Order Dividing Comal County Water Improvement District No. 3; Establishing Terms of Division; creating Comal County Water Improvement District No. 3 Master District (“Master District”), Comal County Water Improvement District No. 3A (“District 3A”), and Comal County Water Improvement District No. 3B (“District 3B”); and Appointing Directors (the “Division Order”);

WHEREAS, on May 4, 2024, the Master District and District 3A held elections for, among other purposes, to confirm the creation of the districts and to elect directors to each district (“Second Directors Elections”);

WHEREAS, a plan for dividing the Original District was not provided to the City prior to the Second Directors Elections;

WHEREAS, as a result of the Division Order, District 3A and District 3B each encompass more than 100 acres, but the Master District encompasses fewer than 100 acres;

WHEREAS, the Division Order does not cause any area within a final plat to fall within more than one district; and

WHEREAS, notice of the proposed division was not provided to the City 60 days prior to the Original District's adoption of the Division Order;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: The City waives its rights under the Agreement to enforce timely adoption of agreements related to the Service Agreements by the Original District, Master District, District 3A, and District 3B, and agrees that any action or inaction by the Original District, Master District, District 3A, or District 3B, with respect to the Service Agreement prior to the date of this Resolution shall not constitute an Event of Default under the Agreement.

SECTION 2: The City waives its rights under the Agreement to enforce terms related to the division of the Original District into Master District, District 3A, and District 3B, and agrees that any action or inaction by the Original District, Master District, District 3A, or District 3B with respect to division of the Original District prior to the date of this Resolution shall not constitute an Event of Default under the Agreement and shall not be grounds to withhold issuance of certificate of occupancy.

PASSED, ADOPTED AND APPROVED this 22nd day of July, 2024.

Neal Linnartz, Mayor

ATTEST:

Gayle Wilkinson, City Secretary